

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 27 OF 2005.

Shri David D'Souza,
major, resident of
Casa Giovanni, St. Minguel Vaddo,
Dando, Anjuna, Bardez, Goa.

.... Petitioner.

Versus

The Goa Coastal Zone
Management Authority,
Through its Member Secretary,
with office at c/o Department of
Science, Technology and Environment,
Opp. Saligao Seminary,
P.O.Saligao, Bardez, Goa.

..... Respondent.

Petitioner present in person.

Shri S.R. Rivonkar, Advocate for the Respondent.

**CORAM: A.P. LAVANDE &
N. A. BRITTO, JJ.**

Date of reserving the Judgment: 23.03.2005.

Date of pronouncing the Judgment: 29.03.2005.

J U D G M E N T: (PER BRITTO, J.)

Rule. By consent heard forthwith.

2. Heard the petitioner who has chosen to argue the petition by himself
after dispensing with two Advocates earlier engaged by him.

3. The petitioner in this petition prays for a writ of certiorari or any other appropriate writ or order be issued against the respondent to quash its Order dated 17.11.2004.

4. The petitioner by sale deed dated 7.3.2001 purchased a property known as "Fondvem" surveyed under No.42/11 situated at Anjuna, Bardez, Goa, admeasuring about 750 sq.mts. As per the petitioner, at the time of purchase of the said property, he was informed by his vendor that there was a structure which was used for the purpose of storing coconuts, etc. and the said structure due to its non-use had collapsed, and, as per the petitioner there existed ruins of the said structure which fact was incorporated in the sale deed.

5. Upon a complaint made by the Collectorate, North Goa, that an illegal construction was in progress in violation of the Coastal Regulation Zone Notification dated 19.2.1991 issued under the Environment (Protection) Act, 1986, a show cause notice came to be issued to the petitioner dated 24.5.2004 by the Respondent. The said notice also mentioned that a site inspection was carried out and that a residential house of about 70 sq.mts. Within NDZ-200 mts. From the High Tide Line was existing. The petitioner was therefore called upon to show cause as to

why the said house/structure should not be demolished. The notice was served by affixation. Subsequently the petitioner filed a reply and was also heard in the matter. The petitioner in the said reply, inter alia, stated that he erected the said structure at the site where the old structure was supposed to be in existence presuming that he need not have taken any permission from the concerned authorities, firstly because of absence of State landlordism and secondly it was meant to be merely a room for shelter and not a perfect house for residence.

6. The respondent, after considering the said reply and hearing the petitioner, came to the conclusion that the petitioner had not produced any documents such as construction license/reconstruction license, original survey plan indicating the structure or conversion sanad to justify the structure. The respondent noted that the sale deed produced by the petitioner did not show the existence of any structure and that the petitioner in his reply had admitted that he was under the impression that permission was not required to be taken and therefore had not obtained any permission from any authority whatsoever for the purpose of erecting the structure. The respondent-Goa Coastal Zone Management Authority after hearing the petitioner at length came to the conclusion that the structure was illegal and the said construction within the No Development Zone (NDZ) of CRZ was in blatant violation of the CRZ Notification of 1991 and

hence of the Environment (Protection) Act, 1986 and therefore directed the petitioner to demolish the said structure and to return the land to its original condition.

7. In the affidavit filed by the respondent, it has been stated that as per the CRZ Notification of 1991, the entire belt of land within 200 metres of High Tide Line (HTL) along the sea shore in CRZ-III area such as the Coastal Anjuna village is designated as the No Development Zone where no construction is permissible except for repairs of existing authorised structures not exceeding CFSI existing plinth area and existing density. As per the respondent, contemplated constructions, reconstructions as well as repairs within the CRZ area mandatorily require prior approval of competent CRZ authority and a construction license from the concerned local authority. The respondent has stated that mere mention of ruins in the schedule appended to the sale deed could not be construed as a valid proof of existence of an authorised old structure and therefore the same could not give any legal status to the structure.

8. Shri Rivonkar, the learned counsel appearing on behalf of the respondent, has brought to our notice that as per the approved Goa State Coastal Amendment plan in Anjuna village, Xapora Fort is classified as CRZ-I and the rest of the area is classified as CRZ-III. The petitioner has submitted that his structure/house did not fall in the coastal zone. Within

200 m. from HTL. However, we see that this plea was not taken by the petitioner in his reply filed to the show cause notice inspite of the fact that the show cause notice had clearly stated that upon inspection the structure/house was found to be falling within the NDZ of 200 metres from the HTL. The petitioner has himself stated in the petition that the base of the hill is at a distance of about 50 metres from the sea and the property purchased by the petitioner is about 100-150 metres above the sea level. These are facts which are stated by him for the first time before this Court. In our view, the petitioner having not disputed that the structure/house built by him did not fall within 200 metres HTL, before the Respondent, cannot be heard now before this court for the first time to say that his structure/house did not fall within the said distance. The respondent has considered all the aspects put forward by the petitioner in reply to the show cause notice and has come to the conclusion that the said structure/house was constructed in blatant violation of the Coastal Regulation Zone (CRZ) Notification of 1991 issued under the Environment (Protection) Act, 1986. That is a finding of fact which is rendered after consideration of all the aspects of the case and which cannot be interfered in the discretionary jurisdiction under Articles 226 and 227 of the Constitution.

9. The petitioner has also prayed in the alternative that a direction be issued to the respondent to demolish all the constructions in the area

surrounding the petitioner's plot and constructed after 15.2.1991. The petitioner has given no details of any of the said constructions and such a vague prayer made by the petitioner can be accepted only to be rejected.

10. We find there is no merit in this petition and consequently the same is hereby dismissed with costs of Rs.1000/- to be paid to the respondent. Rule discharged.

A. P. LAVANDE, J.

N. A. BRITTO, J.

sl.